

On February 5, 1999, a Subpoena To Testify Before Grand Jury was issued to the SMSC with a return date of February 26, 1999. This February 5, 1999 subpoena focused on SMSC membership issues. On March 10, 1999, counsel for SMSC again cooperated with the Independent Counsel and produced over 37,000 pages of non-privileged documents and a privilege log in response to the February 5, 1999 subpoena.

In addition to the documents produced by SMSC, counsel provided an explanation of matters related to the Tribe's actions concerning the process or criteria for membership within the Tribe. This explanation included the following information: The SMSC government, and its officials and agents, are all bound to comply with the terms of the Tribe's Constitution and Bylaws. Membership within the Tribe is controlled by Article II of the tribal Constitution. Section 2 of Article II requires that enactment of tribal ordinances and resolutions governing future membership, adoptions and loss of membership are subject to the approval of the Secretary of the Interior. SMSC, acting through its legislative body, the General Council, did on several occasions during the period 1995 and 1996 take actions concerning the Tribe. On each of those occasions the Secretary of the Interior or his designee, specifically declined to approve the measure.

The fundamental tribal law controlling tribal membership is the Enrollment Ordinance. The Tribe's General Council, the legislative branch of the Tribe, took action to amend it by enacting (1) Ordinance No. 12-28-94-005 (which was initially approved by the Department of Interior on February 17, 1995, and then the Department's approval was rescinded on May 17, 1995); (2) Ordinance No. 2-13-96-